

1 Defendant Clark County received a subpoena from Plaintiff requesting the deposition of
2 District Attorney Steven Wolfson and Deputy District Attorney Jeffrey Rogan, who are opposing
3 counsel in this case. ECF No. 204. In addition, the subpoena included a demand that these
4 individuals produce specific documents. Defendant Clark County requests a protective order and
5 makes the following arguments: (1) there is no Rule 16(b) scheduling order in place making this
6 request premature; (2) depositions of opposing counsel should be prohibited; (3) the subject
7 matter of deposition is not relevant; and (4) Plaintiff refuses to conduct the deposition before an
8 “officer,” as required by Fed. R. Civ. P. 30(b)(5)(A).

9 Plaintiff opposes this motion in his motion to strike (as opposed to a response). *See* ECF
10 No. 206. However, he does not oppose the motion on substantive grounds. Instead, he moved to
11 strike the request, arguing that Defendant Clark County’s motion was not made under penalty of
12 perjury, which is required by 28 U.S.C. § 1746. ECF No. 206 at 1.

13 In its reply, Defendant Clark County argues that 28 U.S.C. § 1746 does not require the
14 filing of motions under penalty of perjury. Additionally, Defendant complied with Fed. R. Civ. P.
15 11 and LR 7-4, by filing a motion with a signed declaration.

16 **II. Analysis**

17 **A. Plaintiff’s Motion to Strike (ECF No. 206)**

18 Defendant Clark County is correct in noting that its motion complies with Fed. R. Civ. P.
19 11 and LR 7-4 because it filed the motion with a signed declaration. Defendant is also correct in
20 stating that 28 U.S.C. § 1746 does not require the filing of motions under penalty of perjury. *See*
21 28 U.S.C. § 1746. As a result, there is no basis to strike Defendant Clark County’s motion.
22 Accordingly, the Court will deny Plaintiff’s motion to strike (ECF No. 206).

23 **B. First Motion for Protective Order (ECF No. 204)**

24 The Court next notes that it could simply grant Defendant Clark County’s motion as
25 unopposed under LR 7-2(d), as Plaintiff has not provided any points and authorities supporting
26 the denial of the motion. Nevertheless, there are other grounds upon which to grant Defendant
27 Clark County’s request.
28

1 Rule 26(c) provides that “a party or any person from whom discovery is sought may move
2 for a protective order.” Fed. R. Civ. P. 26(c)(1). Pursuant to the Rule, the court “may, for good
3 cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or
4 undue burden or expense” Fed. R. Civ. P. 26(c)(1). The party seeking a protective order
5 “bears the burden of showing specific prejudice or harm will result if no protective order is
6 granted.”

7 “[T]he Federal Rules of Civil Procedure do not specifically prohibit the taking of
8 opposing counsel’s deposition.” *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327 (8th Cir.
9 1986) (internal citation omitted). Although deposing opposing counsel is not absolutely
10 prohibited, it is disfavored. *Harter v. CPS Sec. (USA), Inc.*, 2013 WL 129418, at *8 (D. Nev. Jan.
11 9, 2013) (internal citation omitted). This is because “allowing the deposition of opposing counsel
12 ‘not only disrupts the adversarial system and lowers the standards of the profession, but it also
13 adds to the already burdensome time and costs of litigation.’” *Id.*, citing *Shelton*, 805 F.2d at
14 1327. Deposing opposing counsel also “‘detracts from the quality of client representation,’ and
15 has a ‘chilling effect’ on attorney-client representations.” *Id.* Given these concerns, *Shelton* held
16 that a party should be permitted to take the deposition of opposing counsel only where the party
17 seeking to take the deposition has shown that (1) no other means exist to obtain the information
18 than to depose opposing counsel . . . ; (2) the information sought is relevant and nonprivileged;
19 and (3) the information is crucial to the preparation of the case. *Id.* (citations omitted). Here,
20 Plaintiff does not demonstrate how any of those factors are met. As a result, Defendant Clark
21 County has demonstrated good cause for the issuance of a protective order as to the deposition of
22 opposing counsel.


23 Given the analysis above, the Court need not reach the arguments regarding the relevance
24 of the intended deposition or the manner in which Plaintiff intended to conduct it.

25 Additionally, the Court notes that discovery closed on May 30, 2020. Once discovery is
26 closed in a case, no further discovery may be conducted absent a court order modifying the
27 scheduling order. See Fed. R. Civ. P. 16(b)(4). Here, there has been no such request. Accordingly,
28 the issuance of the subpoena by Plaintiff was improper.

This motion is unopposed. Accordingly, the Court may and does grant it under LR 7-2(d). Additionally, the rationale that applies to ECF No. 204 applies here, too. As a result, ECF No. 211 is granted.

IT IS THEREFORE ORDERED that Plaintiff's motion to strike (ECF No. 206) is **DENIED**.

DATED: July 19, 2021


BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE